

Message Text

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C O N F I D E N T I A L CARACAS 11149

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BOGOTA FOR LEURS

E.O. 11652: GDS

TAGS: ENRG, VE

SUBJECT: PETROLEUM REVERSION - RESPONDING TO THE COMPENSATION OFFER

1. BEGIN SUMMARY: THE OIL COMPANIES MUST RESPOND TO THEIR COMPENSATION OFFERS BY MIDNIGHT. THE RESPONSES WILL TAKE THE FORM OF LETTERS, SOME OF WHICH WILL INDICATE CONDITIONAL ACCEPTANCE. IF THE MINISTRY DETERMINES THAT A REPLY CONSTITUTES ACCEPTANCE, HE WILL INSTRUCT THE ATTORNEY GENERAL TO DRAW UP A FORMAL DOCUMENT FOR SIGNATURE. THERE WOULD APPEAR TO BE AN OPPORTUNITY FOR FURTHER NEGOTIATION UNTIL THAT DOCUMENT IS SIGNED. THE MINISTER OF MINES HAS SOME DEGREE OF FLEXIBILITY AND MUCH WILL DEPEND ON HIS ATTITUDE. END SUMMARY.

2. THE REVERSION LAW GIVES THE OIL COMPANIES 15 DAYS TO RESPOND AFTER RECEIPT OF COMPENSATION OFFERS BUT DOES NOT SPECIFY THE FORM THOSE RESPONSES SHALL TAKE. ARTICLE 12 STATES THAT IN THE EVENT OF ACCEPTANCE THE COMPENSATION AGREEMENT SHALL BE SET FORTH IN A WRITTEN DOCUMENT ("ACTA") TO BE PREPARED BY THE ATTORNEY GENERAL AND SIGNED BY HIM AND THE CONCESSIONAIRE. THESE "ACTAS" WILL NOT BE READY FOR SIGNATURE BY THE DEADLINE OF MIDNIGHT TONIGHT. EXPECTATIONS AS TO THE TIME THE ATTORNEY GENERAL WILL NEED TO PUT THEM IN FINAL VARY, BUT IN MOST CASES THE COMPANIES DO NOT ANTICIPATE BEING CALLED TO SIGN BEFORE A WEEK OR TEN DAYS. (MINISTER HERNANDEZ HAS TOLD CREOLE THAT ITS "ACTA" WILL BE AT HAND IN FOUR DAYS, BUT

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THE COMPANY IS SKEPTICAL.)

3. THUS, THE FORM OF THE INTERIM RESPONSE BECOMES RATHER IMPORTANT. SINCE FORMAL SIGNATURE COULD BE SOME DAYS OFF, THE OPPORTUNITY COULD EXIST FOR NEGOTIATING FURTHER ADJUSTMENTS. THE COMPANIES WE HAVE TALKED TO PLAN TO RESPOND AT THIS STAGE WITH LETTERS

DRAFTED SO AS TO PROTECT AS MANY OF THEIR RIGHTS AS POSSIBLE. THE DILEMMA COMES IN NOT KNOWING PRECISELY WHAT THE MINISTRY WILL CONSIDER

"ACCEPTANCE" OR HOW THE MINISTRY WILL ACT IF A PARTICULAR LETTER IS REGARDED AS LESS THAN ACCEPTANCE.

4. AS WE HAVE REPORTED, SEVERAL COMPANIES (E.G., SUN, ARCO) CONTEMPLATE LETTERS WHICH WOULD ATTEMPT TO CONDITION ACCEPTANCE ON THE RESOLUTION OF CERTAIN PROBLEMS ARISING FROM THE COMPENSATION OFFER ITSELF. SOME COMPANIES, NOTABLY GULF, ARE INCLINED TO USE THEIR LETTERS TO PROTEST THE FEES OFFERED FOR TECHNOLOGICAL SERVICES OR OTHER ASPECTS OF THE PROCESS NOT STRICTLY COVERED IN THE COMPENSATION OFFER ITSELF. ALL THE COMPANIES AFFECTED, AS FAR AS WE CAN DETERMINE, WILL PROTEST THE DRAINAGE DEDUCTIONS IN ONE MANNER OR ANOTHER. FINALLY, CREOLE FOR CERTAIN, AND PROBABLY OTHERS, WILL REGISTER OBJECTIONS TO THE CONCEPT OF NET BOOK VALUE AS ADEQUATE COMPENSATION. (SEE SEPTTEL FOR THE PHILLIPS RESPONSE, THE ONE CASE WE ARE AWARE OF IN WHICH A REPLY HAS ALREADY BEEN TENDERED.)

5. HERNANDEZ AND HIS COLLEAGUES PROBABLY AS YET HAVE NOT SET FORMULA FOR DEALING WITH CONDITIONAL RESPONSES. ONE OBVIOUS ALTERNATIVE WOULD BE TO TAKE ANY LETTER WITHOUT A FLAT REJECTION AS ACCEPTANCE AND PROCEED TO DRAW UP THE CORRESPONDING "ACTA", IN THE PROCESS CONSULTING THE COMPANY CONCERNED OR NOT AS CIRCUMSTANCES MIGHT DICTATE. ANOTHER WOULD BE TO CONSIDER A CONDITIONAL RESPONSE AS REJECTION AND PROCEED ACCORDINGLY. IN EITHER EVENT, THE MENE GRANDE LAWYERS AT LEAST BELIEVE THAT THE LAW PROVIDES THE FULL 30-DAY PERIOD (TO NOVEMBER 27) IN WHICH TO SIGN AN "ACTA." WE ARE LESS CERTAIN. AS WE READ THE LAW, THE MINISTRY COULD IMPOSE A TIME LIMIT ON THE BASIS THAT A COMPANY BY FAILING TO SIGN WHEN PRESENTED WITH THE DOCUMENT HAS REJECTED THE OFFER AS THE APPROPRIATE INSTRUCTIONS CAN BE ISSUED TO THE ATTORNEY GENERAL. IT IS CLEAR TO US, HOWEVER, THAT THE MINISTER OF MINES CAN USE THE 30 DAYS TO NEGOTIATE IF HE SO CHOOSES, BUT THAT IN NO CONFIDENTIAL

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CASE CAN BE SEND TO THE CONGRESS AN "ACTA" CONTAINING CONDITIONAL LANGUAGE.

6. THE COMPANIES ARE ALSO FACES WITH THE PROBLEM THAT TODAY THEY WILL HAVE NO MORE THAN INFORMAL AGREEMENTS AT BEST ON THE OTHER TWO LEGS OF THEIR "STOOLS". CREOLE REPORTS THAT HERNANDEZ AND THE PRESIDENT HAVE DECIDED THAT TO SIGN TECHNOLOGY AND OFF-TAKE CONTRACTS SIMULTANEOUSLY WITH THE ACCEPTANCE OF THE COMPENSATION OFFERS WOULD

HAND THE CONGRESS THE OPPORTUNITY TO INSIST ON APPROVING ALL THREE AS INTEGRAL PARTS OF THE COMPENSATION PACKAGE. THIS THEY WILL NOT RISK. CREOLE'S DOLPH (IF EXXON DECIDES TO ACCEPT, AS IT ALMOST CERTAINLY WILL) AND HERNANDEZ PLAN TO INITIAL THOSE CONTRACTS TODAY, PUTTING OFF FORMAL SIGNING UNTIL THE END OF THE YEAR. THE DISADVANTAGES IN THIS SITUATION FOR THE SMALLER PRODUCERS MIGHT BE OFFSET BY THE OPPORTUNITY TO NEGOTIATE FURTHER WITH RESPECT TO TECHNOLOGY AND PURCHASE CONTRACTS. (IT IS PERTINENT TO NOTE IN THIS CONTEXT CREOLE'S INCREASING UNEASINESS ABOUT THE RESENTMENT OF THE SMALLER PRODUCERS OVER ITS PURPORTEDLY FAVORED TREATMENT. DOLPH TELLS ME HE HAS INFORMED HERNANDEZ IN NO UNCERTAIN TERMS THAT EXXON WILL NOT EXTEND TECHNOLOGICAL SUPPORT TO ANY CONCESSION BEYOND ITS OWN EXISTING CONCESSIONS WITHOUT A WRITTEN HOLD-FREE FROM THE OTHER EX-CONCESSIONAIRE CONCERNED. THUS, AT LEAST FOR THE MOMENT, THE MINISTRY CANNOT LOOK TO EXXON TO TAKE UP THE SLACK LEFT BY DEPARTING COMPANIES.)

7. THIS BRIEF REVIEW INDICATES HOW COMPLEX AND UNCERTAIN THE SITUATION IS AS WE APPROACH THE MIDNIGHT DEADLINE--OR SEMI-DEADLINE. THE MAJOR QUESTION IS WHETHER VALENTIN HERNANDEZ WILL ALLOW THE COMPANIES THAT NEED IT ADEQUATE TIME WITHIN THE LAW TO SORT OUT THEIR PROBLEMS. IF HE GIVES SIGNS OF INFLEXIBILITY ON THAT SCORE, I WILL GO BACK TO HIM TO REMIND HIM OF OUR CONCERNS. SHLAUDEMAM

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